

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:SB:2:GBO:GL-132606-01

JRRich

date: **SEP 10 2001**

to: Appeals Office - Greensboro  
Attention: Appeals Officer Janet B. Wooten

from: Area 2 SB/SE Counsel - Greensboro

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subject: Request for Advice

Taxpayer: [REDACTED]

By memorandum dated June 12, 2001, you requested advice concerning whether the taxpayer was entitled to a refund of levy proceeds obtained during the pendency of her innocent spouse claim. We conclude that the Service should not refund the taxpayer the amount of money obtained as a result of the levy.

ISSUE

Whether the taxpayer is entitled to a refund of funds obtained by the Service as a result of a levy served during the pendency of the taxpayer's claim for innocent spouse relief under the provisions of T.R.C. §§ 6015(b) and 6015(f).

FACTS

Taxpayer [REDACTED] and her former spouse, [REDACTED], filed joint income tax returns for the years [REDACTED] and [REDACTED]. Each of these returns was filed reflecting a balance due, which balances were not paid with the filing of the returns. As of [REDACTED], the outstanding balance due with respect to these returns was \$[REDACTED].

On [REDACTED], the taxpayer filed a claim for innocent spouse relief under the provisions of I.R.C. §§ 6015(b) and (f), with respect to the balances due on her [REDACTED] and [REDACTED] income tax returns. By letter dated [REDACTED], the examiner assigned to consider the innocent spouse claim denied the taxpayer's claim for [REDACTED] and [REDACTED], and proposed to relieve the taxpayer of all but \$[REDACTED] of her liability for [REDACTED], under the provisions of I.R.C. § 6015(f). The taxpayer appealed the examiner's determination to the Greensboro Appeals office.

On [REDACTED], while the Appeals Office had under

consideration the taxpayer's innocent spouse claim, an IRS Collection Advisor in Greensboro, North Carolina, who was unaware that the taxpayer had filed the claim for innocent spouse relief, mailed to the Clerk of Superior Court for [REDACTED], North Carolina, a notice of levy with respect to surplus proceeds in the Clerk's possession. The surplus proceeds resulted from the foreclosure and sale of real estate owned by the taxpayer and a former husband, [REDACTED], as tenants in common. The taxpayer's other former husband, [REDACTED], with whom the taxpayer filed joint returns for the years [REDACTED], [REDACTED] and [REDACTED], did not have an interest in the property, as he had relinquished all rights he had in the property under "Separation and Property Settlement Agreement" he signed on [REDACTED].

As a result of the levy served on the Clerk of Superior Court, the Clerk mailed to the Service a check in the amount of \$[REDACTED]. This sum was applied towards the taxpayer's [REDACTED] and [REDACTED] liabilities. The Service applied \$[REDACTED] in satisfaction of the taxpayer's [REDACTED] liability, and \$[REDACTED] towards her [REDACTED] liability.

The taxpayer did not file with the employee of the IRS office which issued the notice of levy, a written request for return of the money which the Clerk's office had mailed to the Service in response to the levy. The only written request the taxpayer made to the Service regarding return of the levied-upon funds, was made during the consideration of the taxpayer's innocent spouse claim.

In response to the Service's letter dated [REDACTED] (in which the Service denied innocent spouse relief to all but a portion of the liability) the taxpayer stated in correspondence dated [REDACTED], to the Greensboro Appeals office, that she wanted to be relieved of liability and to have \$[REDACTED] refunded on the ground that she was an innocent spouse. The taxpayer was referring to the sum the Service received as a result of the levy. The actual amount received as a result of the levy (as noted herein above) was \$[REDACTED].

#### ANALYSIS

The provisions of I.R.C. § 6015(b) provide that an individual who has filed a joint return shall be relieved from liability for tax, interest and penalties, if he/she meets the requirements of such section. This section only applies to tax deficiencies.

A taxpayer may also be granted relief from liability under I.R.C. § 6015(f). The provisions of I.R.C. § 6015(f) provide

that the Government may grant equitable relief from liability on a joint return, if taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency, and, if relief is not available under I.R.C. §§ 6015(b) and (c).

The provisions of I.R.C. § 6015(e)(1)(A) state in part that if an individual elects to have I.R.C. § 6015(b) apply, the individual may petition the Tax Court to determine the relief available. The individual has 90 days from the date that he is notified by the Service of the relief available, to file a petition; if after filing a claim, the Service does not mail the taxpayer notice of the relief available, the individual may file a petition at any time after the date which is 6 months after the date the taxpayer files his claim for relief and before the close of the 90-day period.

Under the provisions of I.R.C. § 6015(e)(1)(B)(i), except for termination and jeopardy assessments, the Service may not levy against a taxpayer making an election under I.R.C. §§ 6015(b) and (c) for collection of any assessment to which such election relates until the expiration of the period described in section 6015(e)(1)(A), or, if a petition has been filed with the Tax Court, until the Tax Court decision has become final.

Internal Revenue Manual Section 104.5.1.7(1) also provides that the IRS is prohibited from taking certain collection actions against a spouse requesting relief under I.R.C. § 6015(b) from the time the claim is filed until the expiration of the 90-day period for filing a petition with the Tax Court, or, if a petition is filed, until the decision of the Tax Court becomes final. The Manual further provides that as a matter of administrative policy, the Service will suspend collection activity against the requesting spouse during the time period the equitable relief provisions of I.R.C. § 6015(f) are being considered. I.R.M. 104.5.1.7(2).


In the instant case, the taxpayer filed Form 8857, "Request for Innocent Spouse Relief," on [REDACTED]. The taxpayer's claim for relief was under the provisions of I.R.C. §§ 6015(b) and 6015(f). While the Service was considering the merits of the taxpayer's innocent spouse claim, on [REDACTED], the Collection Division in Greensboro, North Carolina, mailed a notice of levy to the Clerk of Court for [REDACTED], North Carolina. (The claim is still under consideration by the Appeals Office in Greensboro.) As a result of this levy, the Service received \$[REDACTED]. Of this amount, the Service applied \$[REDACTED] in satisfaction of the taxpayer's [REDACTED] liability, and \$[REDACTED] towards her [REDACTED] liability.

The Service's service of notice of levy while the innocent spouse claim was pending violated I.R.C. § 6015(e)(1)(B)(1), which prohibits a levy during the pendency of an innocent spouse claim under I.R.C. § 6015(b). The service of notice of levy during the pendency of the taxpayer's claim under the provisions of I.R.C. § 6015(f) also violated Service administrative policy. IRM 104.5.1.7.

The provisions of I.R.C. § 6343(d) provide that if any property has been levied upon and the Secretary determines that the levy was premature or otherwise not in accordance with administrative procedures of the Secretary, the provisions of (b) of section 6343 apply in the same manner as if such property had been wrongfully levied upon (except that no interest shall be refunded to the taxpayer).

Section 6343(b) states in pertinent part that if the Service determines that property has been wrongfully levied upon, an amount equal to the amount of money levied upon may be returned at any time before the expiration of 9 months from the date of such levy. Treasury Regulation § 301.6343-2(b) states that the taxpayer must make a written request for return of the property to the District Director (marked for the attention of the Chief, Special Procedures Staff) for the Internal Revenue district in which the levy was made. The request must include (1) the taxpayer's name and address, (2) a detailed description of the property levied upon, (3) a description of the claimant's basis for claiming an interest in the property levied upon, and (4) the name and address of the taxpayer, the originating Internal Revenue District, and the date of the levy. When a request for the return of property is filed before the expiration of the 9-month period following the levy, an amount of money may be returned after a reasonable period of time subsequent to the 9-month period if necessary for the investigation and processing of such request.

In the instant case, the levy occurred on [REDACTED], and the taxpayer made a written request for return of the levied-upon sum on [REDACTED]. Therefore she made her request for return of the money more than 9 months following the levy. Pursuant to the provisions of I.R.C. § 6343(b) and Treasury Regulation § 301.6342-2(a)(2), the Service may not return the taxpayer's levied-upon funds.

  
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JAMES R. RICH  
Senior Attorney (SBSE)